

46 Am. Jur. 2d Judges § 209

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Judges

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IX. Disqualification to Act in Particular Case

E. Effect of Disqualification

§ 209. Rights and duties of judge where disqualified

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Forms

Forms relating to orders and judge disqualification or withdrawal, generally, see Am. Jur. Pleading and Practice Forms, Judges; Am. Jur. Pleading and Practice Forms, Criminal Procedure [\[Westlaw®\(r\) Search Query\]](#)

A judge errs if the judge refuses to entertain a motion for disqualification and proceeds with the case.¹ Where a party's challenge is timely filed and supported by a sufficient declaration of prejudice under the applicable statutory provisions, the trial judge's jurisdiction is strictly limited to recusing oneself.² Where it is determined that the judge is disqualified, the case should be transferred to another judge or the place of trial changed, as required by law.³ Generally, a disqualified judge is barred from further participation in the case.⁴ In other words, a disqualified judge has no power to act in the case.⁵

A judge compelled to grant a peremptory challenge is immediately divested of authority in the case and may not hear any other matter therein involving a contested issue of law or fact.⁶

All subsequent actions by a judge who fails to comply with the rules governing motions for recusal are void;⁷ however, an order dismissing an action brought by multiple parties, entered after the judge erroneously denied one of the parties' motion for substitution as a matter of right, was null and void as to that party, but not to the other parties.⁸

Any and all orders entered after a motion for substitution of a judge has been improperly denied are null and void.⁹

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Footnotes

- 1 § 188.
- 2 *Bambula v. Superior Court*, 174 Cal. App. 3d 653, 220 Cal. Rptr. 223 (3d Dist. 1985).
- 3 *State v. Hayes*, 199 La. 549, 6 So. 2d 657 (1942); *Haslam v. Morrison*, 113 Utah 14, 190 P.2d 520 (1948).
- 4 *Ross v. Ross*, 77 So. 3d 238 (Fla. 4th DCA 2012).
- 5 *Freedom Communications, Inc. v. Coronado*, 372 S.W.3d 621 (Tex. 2012).
- 6 *Geddes v. Superior Court*, 126 Cal. App. 4th 417, 23 Cal. Rptr. 3d 857 (2d Dist. 2005).
As to peremptory challenges, see § 179.
- 7 *Mosley v. State*, 141 S.W.3d 816 (Tex. App. Texarkana 2004), petition for discretionary review refused, (Oct. 27, 2004).
- 8 *Aussieker v. City of Bloomington*, 355 Ill. App. 3d 498, 291 Ill. Dec. 52, 822 N.E.2d 927 (4th Dist. 2005).
- 9 *In re Austin D.*, 358 Ill. App. 3d 794, 294 Ill. Dec. 881, 831 N.E.2d 1206 (4th Dist. 2005) (overruled on other grounds by, *Powell v. Dean Foods Co.*, 2012 IL 111714, 358 Ill. Dec. 333, 965 N.E.2d 404 (Ill. 2012)).

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